IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
CARY LYNN STENNETT AND	§	CASE NO. 04-50881-RLJ-7
JUDY DIANE STENNETT,	§	
	§	
DEBTORS	§	

MEMORANDUM OPINION

On August 4, 2004, the debtors, Cary and Judy Stennett, filed their Motion to Avoid Non-Possessory, Non-Purchase Money Security Interest of Security Bank Idalou and FSA. Pursuant to the Texas Property Code and 11 U.S.C. §522(f)(2). Security Bank, Idalou ("Bank") filed its response to the debtors' motion on August 17, 2004. By the motion, the debtors seek to avoid a non-possessory, non-purchase money lien which they allege impairs the exemptions they have claimed under the Texas Property Code. The debtors contend that specific items of farm equipment constitute tools of the trade, necessary for the continuation of their farming business, and that the Bank's liens against such items of equipment may be avoided under section 522(f) of the Bankruptcy Code. The Bank disputes both the extent of lien avoidance provided by section 522(f) of the Bankruptcy Code and the nature of the debtors' alleged trade. The values of the claimed exempt property and the lien's classification as non-possessory, non-purchase money is not contested. The Farm Service Agency ("FSA") filed a response of no opposition to the debtors' motion on August 25, 2004.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334(b) and 11 U.S.C. § 522. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

Factual Background

The Court adopts the stipulations of fact filed by the Bank and the Stennetts. The parties' stipulations are as follows:

1. On July 28, 2004, Debtors commenced this case by filing a Voluntary Petition for Relief Under Chapter 7 of the Bankruptcy Code.

2. On August 6, 2004, an Agreed Order Granting Relief from Stay was entered wherein Security Bank was granted relief from the automatic stay as to Security Bank's collateral except for the following items:

A. 1 - Servis blade, Big Rhino;
B. 1 - John Deere Shredder, 1418;
C. 2 - Ford Irrigation Motors, 300 - 6 cyl.; and
D. 1 - John Deere Tandem, 630-27'.

2. On August 4, 2004, debtors filed Debtors' Motion to Avoid Non-Possessory, Non-Purchase Money Security Interest of Security Bank, Idalou and FSA Pursuant to the Texas Property Code and 11 U.S.C. § 522(f)(2) (hereinafter "Motion"). One August 17, 2004, Security Bank filed its Response to Debtors' Motion in which Security Bank asserts that the Debtors can only avoid Security Bank's lien to the extent of $5,000.00.

3. The equipment subject to the Debtors' Motion has a current fair market value as follows:

A. Servis Blade valued at $350.00;
B. JD Shredder valued at $2,750.00;
C. Two 1993 Ford Irrigation Motors valued at $900.00; and
D. A 1989 JD Tandem, serial number 2033, valued at $6,000.00.

4. Cary Lynn Stennett listed his occupation on the bankruptcy schedules as a farm worker. Judy Diane Stennett listed her occupation on the bankruptcy schedules as an office worker.

5. As of January 19, 2005, the Debtors were indebted to Security Bank for the following sums:

A. Note No. 39188 has a balance of $12,836.49;
B. Note No. 411012801 has a balance of $45,081.24; and
C. Note No. 435419102 has a balance of $15,837.75.

See Stipulation[s] of Fact filed January 20, 2005.

From the evidence presented at trial, the Court makes additional findings that are relevant to the issue before the Court.

The Stennetts claim that they are each farmers by trade. The evidence reveals Mr. Stennett is the primary farmer of the family, however. A farmer for twenty-four years, he testified that he currently farms cotton and wheat on 182 acres in Crosby County, which the Stennetts own, as well as on another 300 acres, which they currently rent.

Because of the difficulties he experienced in farming in the past few years, Mr. Stennett also earns income doing custom work such as bailing, planting, and sowing. Presently, Mr. Stennett spends a significant amount of time, as much as 80% of his week, driving trucks for his father. He testified, however, that 80% to 90% of his income is farm related.

Mr. Stennett testified that he uses each of the listed items of equipment, though he admits that some have not been used in several months.[1] He further testified that without the equipment, his farming operation could not continue.

Mrs. Stennett, on the other hand, receives her primary income from her work as a secretary in a school nurse's office. She makes $18,000 per year for her service to the school. She testified that she helps on the farm in the evenings, weekends, and during her summer break. Specifically, Mrs. Stennett keeps the farm books, cleans nozzles, mows, and performs other farm related work in her spare time.

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[1]The Court notes that it is mindful of the seasonal nature of farming, and thus recognizes that not all equipment is used continuously throughout the year.

Mrs. Stennett testified that she knows how to operate and use each of the items of equipment claimed as exempt. But, of the four pieces of equipment that she and her husband seek to exempt, she personally has operated only the Ford irrigation motors. Even then, she has operated the motors on very few occasions. She has never used the shredder, the blades, or the tandem.

Mr. Stennett maintains that, without his wife's help on the farm, he could not continue farming operations. Mr. Stennett testified that he has yet to acquire loans for this year's crop. He believes he can continue farming based upon his existing cash level, though he admits he has not purchased feed or fertilizer for this year's crop.

Discussion

The issues raised in this case are governed by the provisions of section 522(f) of the Bankruptcy Code, which reads in pertinent part as follows:

> (f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–
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> . . .
>
> (B) a nonpossessory, nonpurchase-money security interest in any–
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> . . .
>
> (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor;
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> . . . .
>
> (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of–
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> (i) the lien;
>
> (ii) all other liens on the property; and
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> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.
>
> (B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

. . . .

(3) In a case in which State law that is applicable to the debtor–

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property; the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

11 U.S.C. § 522(f).

There is no dispute that the equipment claimed as exempt here constitutes implements or tools used by a farmer. The Bank questions whether either of the debtors qualify as farmers, however. With respect to Mr. Stennett, the evidence is clear that his primary trade is farming. He has made his living as a farmer for twenty-four years. Further, the Court finds credible Mr. Stennett's testimony that, though not used year-round, the specified items of equipment are essential to his farming operations. *See In re Hrncirik*, 138 B.R. 835, 839 (Bankr. N.D. Tex. 1992). Bank's counsel alluded in closing argument that Mr. Stennett has no realistic chance of continuing his farming business because he had not, as of the date of the hearing, obtained financing from the FSA or purchased feed or fertilizer. Mr. Stennett also testified, however, that he felt confident with the cash on hand from last year he has sufficient capital to farm the upcoming crop. The Court is satisfied that Mr. Stennett will continue farming in the future.

As to Mrs. Stennett, the Court questions whether her primary trade is farming. She

admitted at trial that she derives her primary income and employment from her work as a secretary, not as a farmer. But, she does devote a considerable amount of time each week after work, on the weekends, and during the summer break from school to helping her husband with farming activities. Mrs. Stennett does not actively use all the tools claimed as exempt. Her own testimony elicited during direct detailed how she has never used three of the four items of equipment claimed as exempt.

In light of these circumstances, the question, then, is whether the Stennetts are limited to a $5,000 lien avoidance or whether they may double the amount as joint debtors. Before specifically addressing this issue, the Court must determine the applicability of section 522(f)(3)(B), which contains the $5,000 limitation. A brief analysis of the preceding provisions of section 522(f) is necessary before reaching (f)(3)(B). First, as Mr. Stennett qualifies as a farmer and the equipment constitutes implements or tools for such trade, the Stennetts may, under section 522(f)(1)(B), avoid the Bank's lien against their equipment to the extent it impairs their exemption claim. Second, as noted in *In re Duvall*, 218 B.R. 1008 (Bankr. W.D. Tex. 1998), "[t]he extent of the impairment, and thus the amount of the avoidance is measured . . . by reference to section 522(f)(2)." Accordingly, the Bank's lien impairs the Stennett's exemption to the extent that the sum of –

(i) the lien [$73,755.48]

(ii) all other liens on the property [none];

(iii) the amount of the exemption the Stennetts could claim if there were no liens on the property [$10,000]

exceeds the value that the Stennetts' interest in the property would have in the absence of any lien [$10,000]. The qualifying lien, therefore, impairs the Stennetts' exemption to the extent

of $73,755.48 ($73,755.48 + $0 + $10,000) – ($10,000). If, the analysis ended here, the Bank's lien would be avoided in full as it exceeds the value of the Stennetts' qualifying exempt property. *Id.* at 1012-13.

The Court now turns to subsection (f)(3)(A), the language of which has been characterized as "a textual riddle wrapped in mysterious legislative history inside an enigma of conflicting interpretations." *Id.* at 1018-19. This provision is subject of much discussion in *Duvall*. Without reiterating the court's analysis of subsection (f)(3)(A) in *Duvall*, the Court adopts the following holding of *Duvall* regarding this provision:

> Texas law permits the Debtors to procedurally "waive" their right to claim federal exemptions, and the Debtors have waived that right by voluntarily selecting those exemptions available under the Texas Property Code. The first alternative condition in § 522(f)(3)(A) is satisfied.

Id. at 1019. As in *Duvall*, the Stennetts have, in effect, waived the federal exemptions by claiming exemptions under Texas law.

Finally, before the Court applies the $5,000 limitation, the circumstances of the case must satisfy one of the two conditions of subsection (f)(3)(B). As stated in *Duvall*,

> Texas law must either (1) permit the Debtors to claim exemptions without limitation in amount, except to the extent that the Debtors have permitted the fixing of a consensual lien on any property; or (2) prohibit avoidance of a consensual lien on property otherwise eligible to be claimed as exempt.

Id. at 1019. Texas law provides that a lien against personal property may not be avoided on the ground that it is exempt. *Id.* at 1019 *citing* TEX. PROP. CODE ANN. § 42.002(b) (Vernon Supp. 1998). The second alternative is therefore met and the $5,000 limitation applies.

The central issue before the Court, therefore, is whether the Stennetts, as joint debtors, may double the limitation amount and claim $10,000 in value of equipment with the Bank's

lien avoided to the full extent of the $10,000. The Court does not construe *Duvall* to have addressed this specific question. To resolve this question, the Court looks first to section 522(m), which provides, in pertinent part, that "this section shall apply separately with respect to each debtor in a joint case." 11 U.S.C. § 522(m). Where the statutory language is clear, as in this provision, this Court is strictly limited to enforcing the express terms of the statute. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). "The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" *Id.* at 242 (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

Section 522(f) is applied separately to each debtor, as directed by section 522(m). Mr. Stennett clearly satisfies the various conditions of section 522(f). The equipment constitutes implements or tools of his trade. The Bank's lien impairs his exemptions to the extent of $10,000, but is limited to $5,000. The Court arrives at the same conclusion with respect to Mrs. Stennett. The Court finds nothing under Texas law that prevents her (along with Mr. Stennett) from claiming the equipment as exempt property. Under the Texas Property Code, certain personal property that is provided for a family may be claimed as exempt up to an aggregate value of $60,000. TEX. PROP. CODE 42.001. The defined personal property includes farming implements and tools and equipment used in a trade or profession. TEX. PROP. CODE 42.002. The particular trade or profession is not limited to Mrs. Stennett's particular trade or profession. *See Kelly v. Shields*, 448 S.W.2d 135, 138 (Tex. Civ. App. – San Antonio 1969, writ ref'd n.r.e.). Next, under section 522(f)(1)(B), the non-possessory, non-purchase money lien attaches to "implements . . . or tools of the trade of the debtor *or the*

trade of a dependent of the debtor . . . ." 11 U.S.C. § 522(f)(1)(B) (emphasis added). Section 522(a)(1) defines "dependent" to include "spouse, whether or not actually dependent . . . ." 11 U.S.C. § 522(f)(1)(B). As the Court has concluded, the equipment constitutes tools or implements of Mr. Stennett's trade. For purposes of section 522, Mr. Stennett qualifies as Mrs. Stennett's dependent. As with Mr. Stennett, the lien impairs Mrs. Stennett's exemption to the extent of $10,000, subject to the $5,000 limitation applicable to her. The formula yields the same result as to each debtor. They are therefore jointly entitled to claim the equipment valued at $10,000 with the Bank's lien avoided as to the equipment.

Conclusion

The Court therefore concludes that the Stennetts, as joint debtors, may avoid the Bank's lien to the extent of $10,000. The listed items of equipment will be set aside to the Stennetts as exempt property free of the Bank's lien.

SIGNED March 31, 2005.

/ Robert L. Jones

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE